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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,961

11/03/2005

Andrew Gordon Williams

9010/96542 (02-0073)

7456

22242 7590 12/17/2009
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EXAMINER

BATISTA, MARCOS

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

12/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/529,961	Applicant(s) WILLIAMS, ANDREW GORDON	
	Examiner MARCOS BATISTA	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 09 December 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-74.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Rafael Pérez-Gutiérrez/
 Supervisory Patent Examiner, Art Unit 2617

Continuation of 11. does NOT place the application in condition for allowance because:

In response to Applicant's argument regarding that "Thus, Applicants respectfully disagree that Suumaki discloses the feature of "means for activating, in response to the means for detecting the requested application-specific packets, a plurality of packet sessions with application-specific QoS parameters, without requiring explicit cooperation of application software", as recited in claim 1." The Applicant also states that the means for activating is performed with the explicit cooperation of application software, which is the opposite of the claimed invention "When starting a web browser, for instance, (application F), the socket application programming interface (SAPI) transmits information about starting this application to the control block QMOC. Clearly, this indicates that the SAPI has to know that a specific application."

Suumaki at column 7 lines 37-43 discloses that the (QoS Management & Optimisation Control) QMOC has the task of controlling the activation connection and data flows of each application. The socket application programming interface (SAPI) informs the QMOC of any particular application wishing to establish a connection with another application or service. The QMOC is in charge in controlling the activation of the application without explicit assistance from the SAPI.

Suumaki, column 7 lines 37-43:

3) FIG. 3a also shows the control block QMOC (QoS Management & Optimisation Control). The tasks of this control block QMOC include controlling the activation of application connections and data flows of each application and the allocation of the resources required. In addition, the control block QMOC performs the changes required by the altered needs of the quality of service.

Suumaki, column 8 line 55 - column 9 line 7:

"(9) When, for instance, a user starts an application in a mobile terminal MT, which application needs the data transfer services of the packet network, the socket application programming interface SAPI transmits information of this to the control block QMOC. This request for an application connection can contain information about the quality of service QoS requested by the application. If that is the case, the control block QMOC can use this quality of service information in the establishment of an application connection. If this information about the quality of service is not transmitted from the application, the control block QMOC can check from a data base QoSDB (FIG. 3a) formed in the mobile terminal MT, preferably in the memory means MEM (FIG. 3b), whether information about the quality of service of the application has been saved there. If that is the case, the control block QMOC can use this information saved in the database QoSDB in the establishment of an application connection. If information about the quality of service of the application is not found, the application connection is preferably established by using the default PDP context."

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a person of ordinary skill in the art at the time of the invention would have been motivated to combine the teaching of Suumaki, which relates to a method for optimizing the transfer of information between one or more applications run in a mobile terminal (MT) and a packet-switched network (NW), with the teaching of Jungck, which relates to a packet interceptor apparatus coupled with the network so as to be able to intercept and process packets flowing over the network to arrive at the claimed invention.